

REFERENCE TITLE: case delay; assignment of prosecutors

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2249

Introduced by  
Representatives Gray C: Nelson, Pearce

AN ACT

AMENDING SECTIONS 11-532 AND 41-192, ARIZONA REVISED STATUTES; RELATING TO  
THE ASSIGNMENT OF PROSECUTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-532, Arizona Revised Statutes, is amended to  
3 read:

4 11-532. Powers and duties

5 A. The county attorney is the public prosecutor of the county and  
6 shall:

7 1. Attend the superior and other courts within the county and conduct,  
8 on behalf of the state, all prosecutions for public offenses.

9 2. Institute proceedings before magistrates for the arrest of persons  
10 charged with or reasonably suspected of public offenses when the county  
11 attorney has information that the offenses have been committed.

12 3. When not engaged in criminal proceedings in the superior court,  
13 attend upon the magistrates in cases of arrest when required by them, and  
14 attend before and give advice to the grand jury.

15 4. Draw indictments and informations, defend actions brought against  
16 the county and prosecute actions to recover recognizances forfeited in courts  
17 of record and actions for recovery of debts, fines, penalties and forfeitures  
18 accruing to the state or county.

19 5. Deliver receipts for monies or property received in the county  
20 attorney's official capacity and file duplicate receipts with the clerk of  
21 the board.

22 6. On the first Monday of January, April, July and October in each  
23 year, file with the board of supervisors an account, verified by oath, of all  
24 monies received in the county attorney's official capacity during the  
25 preceding three months, and at the same time pay it to the county treasurer.

26 7. When required, give a written opinion to county officers on matters  
27 relating to the duties of their offices.

28 8. Keep a register of official business, and enter therein every  
29 action prosecuted, criminal or civil, and of the proceedings therein.

30 9. Act as the legal advisor to the board of supervisors, attend its  
31 meetings and oppose claims against the county ~~which~~ THAT the county attorney  
32 deems unjust or illegal.

33 10. Act as attorney for school districts except as provided in section  
34 15-343, or except in any lawsuits involving a conflict of interest with other  
35 county offices at which time the attorney general may represent the school  
36 district.

37 11. Act as attorney for the community college district except as  
38 provided in section 15-1448 or except in any lawsuits involving a conflict of  
39 interest with other county offices, at which time the attorney general may  
40 represent the community college district.

41 12. Defend all locally valued and assessed property tax appeals as  
42 provided in section 42-16208.

43 13. ASSIGN PROSECUTORS TO CRIMINAL CASES. TO THE EXTENT PRACTICABLE,  
44 THE INITIALLY ASSIGNED PROSECUTOR SHALL REMAIN ASSIGNED TO THE CASE UNTIL  
45 FINAL DISPOSITION.

1 B. Upon receipt of an appellant's brief in a criminal appeal, the  
2 county attorney shall furnish the attorney general with a true statement of  
3 the facts in the case, together with the available authorities and citations  
4 that are responsive to the assignments or specifications of error.

5 C. The county attorney may represent a school district governing board  
6 member against whom an action is brought in the board member's individual  
7 capacity until such time as it is established as a matter of law that the  
8 alleged activity or events ~~which~~ THAT form the basis of the complaint were  
9 not performed, or not directed to be performed, within the scope or course of  
10 the member's duties.

11 D. Notwithstanding ~~the provisions of~~ article 12 of this chapter, in  
12 connection with the investigation or prosecution of any matter involving the  
13 death of a person, the county attorney may request that the medical examiner,  
14 for the county in which the prosecution will take place, conduct the medical  
15 examination.

16 Sec. 2. Section 41-192, Arizona Revised Statutes, is amended to read:

17 ~~41-192.~~ Powers and duties of attorney general; restrictions on  
18 state agencies as to legal counsel; exceptions

19 A. The attorney general shall have charge of and direct the department  
20 of law and shall serve as chief legal officer of the state. The attorney  
21 general shall:

22 1. Be the legal advisor of the departments of this state and render  
23 such legal services as the departments require.

24 2. Establish administrative and operational policies and procedures  
25 within ~~his~~ THE department.

26 3. Approve long-range plans for developing departmental programs  
27 therein, and coordinate the legal services required by other departments of  
28 this state or other state agencies.

29 4. Represent school districts and governing boards of school districts  
30 in any lawsuit involving a conflict of interest with other county offices.

31 5. Represent political subdivisions, school districts and  
32 municipalities in suits to enforce state or federal statutes pertaining to  
33 antitrust, restraint of trade or price-fixing activities or conspiracies,  
34 ~~provided that~~ IF the attorney general ~~shall notify~~ NOTIFIES in writing ~~such~~  
35 THE political subdivisions, school districts and municipalities of the  
36 attorney general's intention to bring any such action on its behalf. At any  
37 time within thirty days after ~~such~~ THE notification, ~~such~~ THE political  
38 subdivisions, school districts and municipalities ~~may~~, by formal resolution  
39 of its governing body, MAY withdraw the authority of the attorney general to  
40 bring the intended action on its behalf.

41 6. In any action brought by the attorney general pursuant to state or  
42 federal statutes pertaining to antitrust, restraint of trade, or price-fixing  
43 activities or conspiracies for the recovery of damages by this state or any  
44 of its political subdivisions, school districts or municipalities, in  
45 addition to the attorney general's other powers and authority, the attorney

1 general on behalf of this state may enter into contracts relating to the  
 2 investigation and prosecution of such action with any other party plaintiff  
 3 who has brought a similar action for the recovery of damages and with whom  
 4 the attorney general finds it advantageous to act jointly or to share common  
 5 expenses or to cooperate in any manner relative to such action. In any such  
 6 action, notwithstanding any other laws to the contrary, the attorney general  
 7 may undertake, among other things, to render legal services as special  
 8 counsel or to obtain the legal services of special counsel from any  
 9 department or agency of the United States, of this state or any other state  
 10 or any department or agency thereof or any county, city, public corporation  
 11 or public district in this state or in any other state that has brought or  
 12 intends to bring a similar action for the recovery of damages or their duly  
 13 authorized legal representatives in such action.

14 7. Organize the civil rights division within the department of law and  
 15 administer ~~such~~ THE division pursuant to the powers and duties provided in  
 16 chapter 9 of this title.

17 8. Compile, publish and distribute to all state agencies, departments,  
 18 boards, commissions and councils, and to other persons and government  
 19 entities on request, at least every ten years, the Arizona agency handbook  
 20 that sets forth and explains the major state laws that govern state agencies,  
 21 including information on the laws relating to bribery, conflicts of interest,  
 22 contracting with the government, disclosure of public information,  
 23 discrimination, nepotism, financial disclosure, gifts and extra compensation,  
 24 incompatible employment, political activity by employees, public access and  
 25 misuse of public resources for personal gain. A supplement to the handbook  
 26 reflecting revisions to the information contained in the handbook shall be  
 27 compiled and distributed by the attorney general as deemed necessary.

28 B. Except as otherwise provided by law, the attorney general may:

29 1. Organize the department into such bureaus, subdivisions or units as  
 30 ~~he~~ THE ATTORNEY GENERAL deems most efficient and economical, and consolidate  
 31 or abolish them.

32 2. Adopt rules for the orderly conduct of the business of the  
 33 department.

34 3. Employ and assign assistant attorneys general and other employees  
 35 necessary to perform the functions of the department. TO THE EXTENT  
 36 PRACTICABLE, ANY ASSISTANT ATTORNEY GENERAL WHO IS ASSIGNED TO A CRIMINAL  
 37 CASE SHALL REMAIN ASSIGNED TO THAT CASE UNTIL FINAL DISPOSITION.

38 4. Compromise or settle any action or claim by or against this state  
 39 or any department, board or agency ~~thereof~~ THIS STATE. ~~Where-such~~ IF THE  
 40 compromise or settlement involves a particular department, board or agency of  
 41 this state, the compromise or settlement shall be first approved by ~~such~~ THE  
 42 department, board or agency. ~~Where~~ IF no department or agency is named or  
 43 otherwise materially involved, the approval of the governor shall be first  
 44 obtained.

1           5. Charge reasonable fees for distributing official publications,  
2 including attorney general legal opinions and the Arizona agency handbook.  
3 The fees received shall be transmitted to the state treasurer for deposit in  
4 the state general fund.

5           C. Assistants and employees in any legal division subject to a merit  
6 system prior to March 6, 1953 shall remain subject thereto.

7           D. The powers and duties of a bureau, subdivision or unit shall be  
8 limited to those assigned by law to the department.

9           E. Notwithstanding any law to the contrary, except as provided in  
10 subsections F and G of this section, no state agency other than the attorney  
11 general shall employ legal counsel or make an expenditure or incur an  
12 indebtedness for legal services, but the following are exempt from this  
13 section:

- 14           1. The director of water resources.
- 15           2. The residential utility consumer office.
- 16           3. The industrial commission.
- 17           4. The Arizona board of regents.
- 18           5. The auditor general.
- 19           6. The corporation commissioners and the corporation commission other  
20 than the securities division.
- 21           7. The advocate for private property rights.
- 22           8. The office of the governor.
- 23           9. The constitutional defense council.

24           F. If the attorney general determines that ~~he~~ **THE ATTORNEY GENERAL** is  
25 disqualified from providing judicial or quasi-judicial legal representation  
26 or legal services on behalf of any state agency in relation to any matter,  
27 the attorney general shall give written notification to the state agency  
28 affected. If the agency has received written notification from the attorney  
29 general that the attorney general is disqualified from providing judicial or  
30 quasi-judicial legal representation or legal services in relation to any  
31 particular matter, the state agency is authorized to make expenditures and  
32 incur indebtedness to employ attorneys to provide the representation or  
33 services.

34           G. If the attorney general and the director of the department of  
35 agriculture cannot agree on the final disposition of a pesticide complaint  
36 under section 3-368, if the attorney general and the director determine that  
37 a conflict of interest exists as to any matter or if the attorney general and  
38 the director determine that the attorney general does not have the expertise  
39 or attorneys available to handle a matter, the director is authorized to make  
40 expenditures and incur indebtedness to employ attorneys to provide  
41 representation or services to the department with regard to that matter.

42           H. Any department or agency of this state authorized by law to  
43 maintain a legal division or incur expenses for legal services from funds  
44 derived from sources other than the general revenue of the state, or from any  
45 special or trust fund, shall pay from such source of revenue or special or

1 trust fund into the general fund of the state, to the extent such funds are  
2 available and upon a reimbursable basis for warrants drawn, the amount  
3 actually expended by the department of law within legislative appropriations  
4 for such legal division or legal services.

5 I. Appropriations made pursuant to subsection H of this section shall  
6 not be subject to lapsing provisions otherwise provided by law. Services for  
7 departments or agencies to which this subsection and subsection G of this  
8 section are applicable shall be performed by special or regular assistants to  
9 the attorney general.

10 J. Notwithstanding ~~the provisions of~~ section 35-148, monies received  
11 by the attorney general from charges to state agencies and political  
12 subdivisions for legal services relating to interagency service agreements  
13 shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney  
14 general agency services fund. Monies in the fund are subject to legislative  
15 appropriation and are exempt from the provisions of section 35-190,~~—~~ relating  
16 to lapsing of appropriations.